

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

OSCAR CRUZ
Plaintiff,

v.

**ABDIRAHMAN A. WARSAME AND
MM TRUCKING, L.L.C.,**
Defendants

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Civil Action No.: _____
JURY

**DEFENDANTS MM TRUCKING, L.L.C. AND ABDIRAHMAN A. WARSAME'S
NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants ABDIRAHMAN A. WARSAME (“Warsame”) and MM TRUCKING, L.L.C (“MM TRUCKING”) (collectively, “Defendants”) file this Notice of Removal and respectfully shows the following:

I. STATE COURT ACTION

The above-styled suit was initially brought in the 370th District Court of Hidalgo County, cause number C-0120-21-G.

II. PARTIES

Plaintiff, Oscar Cruz (“Plaintiff”), is an individual residing in Hidalgo County, Texas and upon information and belief is a citizen of the State of Texas.

Defendant Abdirahman A. Warsame (“Warsame”) is an individual resident of Dakota County, Nebraska and is a citizen of the State of Nebraska.

Defendant MM Trucking, L.L.C. (“MM Trucking”) is a company sharing citizenship with its member(s). *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). MM Trucking’s sole member is a citizen of Minnesota.

III. JURISDICTION

This Court has subject-matter jurisdiction over this cause pursuant to 28 U.S.C.A § 1332 because this is a civil action in which the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states. The following information establishes this Court’s subject-matter jurisdiction under 28 U.S.C.A § 1332:

1. Plaintiff states in Plaintiff’s Original Petition that “Plaintiff seeks monetary relief over \$1,000,000.¹”;
2. Plaintiff states in his Original Petition that he “is an individual residing in Hidalgo County, Texas.”² Upon information and belief, Plaintiff is also a citizen of the State of Texas;
3. Defendant Warsame is a citizen of the state of Nebraska;
4. Defendant MM Trucking is a company and therefore shares citizenship with its sole member who is a citizen of Minnesota; and
5. Therefore, this Court has subject-matter jurisdiction under 28 U.S.C.A § 1332(a)(1) because the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different States.

1 Pl’s Original Pet. at 4.

2 Pl’s Original Pet. at 1.

IV. TIMELINESS

MM Trucking did not receive proper notice for triggering of the thirty-day time period for removal under 28 U.S.C.A. § 1446 until after January 27, 2021. *Montery Mushrooms, Inc. v. Hall*, 14 F. Supp. 2d 988, 990 (S.D. Tex. 1988); Charles Allen Wright, Arthur R. Miller & Edward H. Cooper, 14C Federal Practice and Procedure: Jurisdiction §3731 (“At one time courts were divided as to whether service on a statutory agent, such as a Secretary of State (or comparable state official) designated by a nonresident motorist statute, was sufficient to commence the time period for removal. Realistically speaking, of course, statutory agents are not true agents but merely a medium for transmitting the relevant papers. Accordingly, it now appears to be settled law that the time for removal begins to run only when the defendant or someone who is the defendant’s agent-in-fact receives the notice via service. . .). Specifically, although the Texas Secretary of State received statutory service for MM Trucking on January 19, 2021, MM Trucking did not receive actual service of Plaintiff’s petition in this matter until January 27, 2021. Further, this notice of removal is also filed within thirty days of statutory service.

Further, Warsame is also removing this matter. Warsame was never provided with a copy of the initial pleading through service. Warsame was otherwise first provided with a copy of the initial pleading by counsel on February 18, 2021. Thus, Warsame’s removal is timely because this notice of removal is filed within thirty days of February 18, 2021. To the extent necessary, MM Trucking consents to Warsame’s removal of this matter under 28 U.S.C. § 1446(b)(2)(C).

V. ATTACHMENTS

Accompanying this Notice of Removal is the following:

1. All executed process in the case (**Exhibit A**);
2. Pleadings asserting causes of action (**Exhibit B**);

3. Defendants' Original Answer (**Exhibit C**);
4. Any orders signed by the judge (none);
5. The docket sheet (**Exhibit D**);
6. An index of matters being filed (**Exhibit E**); and
7. A list of counsel of record, including addresses, telephone numbers and parties represented (**Exhibit F**).

VI. CONDITIONS PRECEDENT

MM Trucking and Warsame have tendered the required filing fee to the Clerk of the United States District Court for the Southern District of Texas, McAllen Division, along with this Notice of Removal. A copy of this Notice of Removal is also being filed in the 370th District Court of Hidalgo County, Texas, and all counsel of record are being provided with complete copies.

Accordingly, MM Trucking and Warsame respectfully provides this notice that this case is removed to this Court unless and until the case is remanded.

Respectfully submitted,

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By: /s/ Blain Donnell

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**ATTORNEYS FOR DEFENDANTS
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A. WARSAME**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served pursuant to the Federal Rules of Civil Procedure on this the 19th day of February 2021, upon the following parties and counsel of record:

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